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Andrew's Excuses

- Excuses #6 and #7: Fraud and Promissory Estoppel
- Raised: Andrew's Amended Answer
- Status: Rejected by the Jury



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Andrew's Excuses

- Excuses #8, #9 and #10: Equitable Estoppel, Implied License and Unclean Hands
- Raised: Andrew's Amended Answer
- Status: Operative Facts Rejected by the Jury



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Read Factor #6:
Duration of Andrew's Willful Infringement Supports
Increased Damages

- "Duration of defendant's misconduct." *Read*, 970 F.2d at 827.
- Andrew's calculated decision to infringe began in 2004, shortly after settlement of the prior case

Read Factor #6:

**Duration of Andrew's Willful Infringement Supports
Increased Damages**

- Andrew's willful infringement continued despite warnings and Complaint
 - First offer to sell came before the Complaint (PTX 141-176)
 - Contract finalized after warnings and Complaint (Tr. at 722)
 - First shipment after warnings and Complaint
- Andrew Continued Infringing Through Trial
- Andrew's Post-Trial Briefing Suggests That Andrew Will Continue Infringing in the Future



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Read Factor #7: Damages Should Be Increased Because Andrew Took No Remedial Action

- “Remedial action taken by the defendant.” *Read*, 970 F.2d at 827.
- Undisputed that Andrew took no remedial action and made no attempt to design around the 144 patent (Tr. at 1159-61)

*Read Factor #8: Andrew's Motivation to Harm
Supports an Increase in Damages*

- “Defendant’s motivation for harm.” *Read*, 970 F.2d at 827.
- Andrew specifically intended to displace TruePosition in Saudi Arabia (PTX 389)
- Andrew knew that any sale it made was a sale lost by TruePosition in this highly competitive market

Read Factor #9:

Andrew's Concealment of Its Willful Infringement
Supports an Increase in Damages

- “[W]hether defendant attempted to conceal its misconduct.” *Read*, 970 F.2d at 827.
- When Andrew began infringing the patent by its offer for sale in 2004, it did not tell TruePosition
- Andrew **never** approached TruePosition for a license to the 144 patent, despite notification letters and express terms of the settlement agreement (Tr. at 337)

 TruePosition

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TruePosition's Motion for Enhanced Damages and Attorneys' Fees

- Even Before *Seagate*, Willful Infringers as a Rule Were Subject to Enhanced Damages and Attorneys' Fees
- “After an express finding of willful infringement, a trial court should provide reasons for not increasing a damages award or for not finding a case exceptional for the purpose of awarding attorneys fees.” *Tate Access Floors v. Maxcess Techs.*, 222 F.3d 958, 972 (Fed. Cir. 2000) (internal citations omitted).